

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2401 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PATEL KUNVARJI NARAN

Versus

M SAHU

Appearance:

MR YS MANKAD for Petitioners

MS SIDDHI TALATI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. The counsel for the respondents raised a preliminary objection that this writ petition which is filed by the petitioner against the show cause notice is not maintainable. In support of this preliminary objection, she placed reliance on the decision of the

Apex Court in the case of Executive Engineer, B.SH.B. vs. Ramesh Kumar Singh reported in 1996 (1) SCC 327.

2. Learned counsel for the petitioner does not dispute that this special civil application is filed against the show cause notice only.

3. This court on 31st May, 1988 passed the following order:

NPA returnable on 16-6-88 is already issued. It is submitted that in the meanwhile the Collector is likely to proceed with the inquiry. A show cause notice dated February 29, 1988 was issued and the inquiry was fixed on March 29, 1988. When the notice on this petition was issued on May 6, 1988, the learned advocate should have requested for the interim relief. It appears that no notice for interim relief is ordered to be issued. However, considering the fact that the notice to show cause issued by the Collector, and Mr. Y.S. Mankad submits that the hearing is fixed today i.e. 31-5-88, the Collector should not be prevented from holding the inquiry but the interest of the petitioners can be protected, if the Collector is restrained from passing the final order till further orders. The Collector, Bhuj is restrained from passing the final order on the basis of the show cause notice dated February 29, 1988 till 25-6-1988.

4. This court has only restrained the Collector from passing the final order on show cause notice. What happened ultimately in the matter is not given out. Learned counsel for the petitioner has failed to show how the authority, the respondent No.1 herein who has given the show cause notice to the petitioner is totally lacking jurisdiction in the matter. The petitioner can raise all the objections in reply to the show cause notice. This practice of the litigants to stall the proceedings at this stage by filing of the special civil application in this court deserves to be deprecated. The court may not interfere in the matter of show cause notice as after final decision in the matter, the petitioner may have the remedy of appeal or revision etc.. By giving of the show cause notice, nothing adversely has been decided against the petitioners. In such matters, the court should first insist to the litigants to go before the authority concerned and raise all the grounds against the show cause notice and permit the authority to pass the final order. Against the final

order, they have all the right of appeal or revision application or to come before this court, as the case may be. At this stage, no interference in the matter is called for of this court.

5. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

zgs/-